

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSHUA MAY,

Plaintiff,

vs.

No. 18-cv-1109 WJ-LF

B. JUDD, *et al*,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court following Plaintiff's failure to amend his Civil Rights Complaint (Doc. 1-3). Plaintiff is incarcerated and proceeding *pro se*. He filed the original Complaint on October 22, 2018, and it was subsequently removed to Federal Court. The Complaint challenges Plaintiff's placement in the Predatory Behavior Management Program (PBMP). Prison officials referred him to that program after he tried to snatch contraband from a correctional officer's hand. The Complaint alleges Plaintiff did not receive due process in connection with those charges, and that his conditions of confinement in the PBMP constituted cruel and unusual punishment. On December 2, 2018, Defendants filed a motion to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6).

By a Memorandum Opinion and Order entered September 24, 2019, the Court dismissed the Complaint for failure to state a cognizable claim. Plaintiff's exhibits demonstrated he received notice and an opportunity to be heard before his PBMP placement. The Court also found his conditions of confinement were not extreme enough to constitute an Eighth Amendment violation, and that none of the allegations demonstrated negligence. The ruling cited relevant Tenth Circuit

cases that provided guidance on cruel and unusual punishment and due process claims.

Consistent with *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991), Plaintiff was given thirty days (*i.e.*, until October 24, 2019) to amend his complaint. The Court advised that if he failed to timely file an amended complaint, the case would be dismissed with prejudice and without further notice. Plaintiff did not file an amended complaint or otherwise respond to the Memorandum Opinion and Order. This action will therefore be dismissed with prejudice pursuant to 28 U.S.C. § 1915A and Fed. R. Civ. P. 12(b)(6) for failure to state a claim on which relief may be granted.

IT IS ORDERED that this action is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915A and Fed. R. Civ. P. 12(b)(6) for failure to state a claim on which relief may granted; and judgment will be entered.

SO ORDERED.



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE